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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

April 11, 1996

Mr. William Caton, Secretary  
Federal Communications Commission  
1919 M Street NW, Room 222  
Washington, DC 20554

Re: Open Video Systems, CS Docket No. 96-46

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Dear Mr. Caton:

General Instrument Corporation ("GI") submits this letter as reply comments in the above-referenced proceeding on Open Video Systems ("OVS"). GI responds to the comments of the National Association of Broadcasters ("NAB Comments") and the joint comments of the Electronic Industries Association Consumer Electronics Manufacturers Association and the Consumer Electronics Retailers Coalition ("EIA Comments"). We also address the Commission's tentative conclusion on the capacity of switched digital video ("SDV") and some of the commenters' reactions to that conclusion.

**NAB Comments**

The NAB has called for the Commission to require OVS operators to employ the ATSC A/53 digital video specification including the modulation scheme. NAB Comments at p. 6. We oppose that request for the same reasons that we opposed the NAB's similar request in MM Docket No. 87-268 with respect to cable television systems:

- The Grand Alliance system was carefully designed to assure interoperability;
- Multi-standard ATV receivers will be economically feasible;
- The ATSC digital ATV standard does not explicitly cover cable TV or OVS;

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- Other standards organizations are developing ATV standards for broadband networks; and
- A separate proceeding will deal with digital TV technical standards issues.

We hereby incorporate by reference our Reply Comments in MM Docket No. 87-268, filed January 22, 1996.

## EIA Comments

EIA argues that Section 304 of the Telecommunications Act of 1996 should be read as requiring "unbundling" of OVS service from OVS equipment located on the customer's premises (EIA Comments, at 11), even though it admits that Section 304 may not be directly applicable to OVS operators. (*Id.* at 12).

Section 304 of the 1996 Act is an ambiguous and complex provision, subject to sharp disagreement among interested parties over its meaning and the appropriate means of implementation. However, regardless of the vagaries of section 304, new section 653(c)(1)(C) clearly provides that section 304 "shall not apply to any operator of an open video system ...."<sup>1</sup>

EIA's suggestion that the Act requires the application of the unbundling provision to OVS because section 653(c)(1)(C) only covers provisions that apply to *cable operators*, whereas section 304 applies to *all MVPDs* (EIA comments, at 12), is a tortured reading of the Act that belies the plain language used by Congress and betrays the weakness of EIA's legal position. EIA then argues that even if section 304 is not "directly applicable" to OVS operators, the Commission should nevertheless use its discretion to extend the unbundling rules to OVS. (*Id.* at 12-13) However, the Commission is not at liberty to do so. Section 653(c)(1)(C)'s

<sup>1</sup> See Communications Act of 1934, as amended, Section 653(c)(1)(C) ("sections 612 and 617, and parts III and IV (other than sections 623(f), 628, 631, and 634), of [Title VI] shall not apply to any operator of an open video system ...."). Since section 304 adds new section 629 to *part III* of Title VI of the Communications Act, and since section 629 is not one of the sections specifically listed in section 653(c)(1)(C) as applying to OVS operators, it is clear that new section 629 and its unbundling requirement do not apply to OVS.

directive that section 304 (*i.e.*, new section 629) does not apply to OVS operators is mandatory and unqualified (*i.e.*, "shall not apply"). The Commission is without authority to contradict this clear congressional directive.

In addition, as GI noted in its initial comments, to the extent that EIA's proposal on unbundling policies might flow from the Commission's Computer Inquiry Rules (47 C.F.R. 64.702), the Congress has told the Commission to repeal those rules with respect to OVS. *See* Comments of GI herein (citing Joint Explanatory Statement of the Committee of Conference, at 178-79); *see also* comments of Bell Atlantic, *et al.* at p. 4.

Finally, to the extent EIA's comments address the scope and meaning of Section 304 generally, this is not the proper venue for consideration of these comments. Rather, these comments require their own independent proceeding to facilitate a full analysis of the many complex issues involved. While we disagree with a number of assertions in the EIA Comments about the scope and requirements of Section 304,<sup>2</sup> those disagreements are best evaluated in the separate proceeding on Section 304 which the Commission has scheduled for release in the second quarter of 1996.

### Capacity of SDV Systems

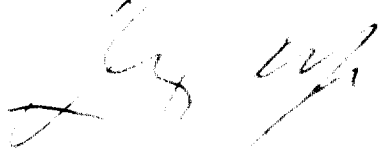
Finally, we note that there has been very little said in response to the Commission's tentative conclusion that SDV systems have unlimited capacity. While the Joint Comments of Bell Atlantic, *et al.*, support this approach (Joint Comments of Bell Atlantic, *et al.*, at p. 16), we note that there are a variety of technologies that may be employed to provide SDV, some of which have greater capacity constraints and some have fewer. For example, not all SDV technologies provide dedicated full time paths between the video servers and the central office, and between the central office and the subscriber. Even wireline telephone service, the model for the SDV technology that does provide fully dedicated paths, is subject to blocking during unusual peak periods when all the dial tone generators are in use, or all the tandem trunks are in use; similar central office or network congestion could affect the capacity of switched digital technology.

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<sup>2</sup> For example, GI believes that in the interest of competitive neutrality and to avoid stifling innovation, the Commission should use its waiver authority under section 304 and not apply section 304 to *any* multichannel video programming provider, especially during the period of tremendous technological dynamism that is currently occurring in the broadband marketplace.

Consequently, we agree with TCI's view that decisions with respect to SDV capacity may be premature. See Comments of TCI at p. 13.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. G. [unclear]", written in a cursive style.